

Message Text

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TAGS: PFOR, CFED (JUDICIAL ASSISTANCE TREATY), SZ

SUBJECT: US-SWISS TREATY ON MUTUAL ASSISTANCE

REF: STATE 027078

1. DISCUSSION WITH DR. CURT MARKEES FDJP PRODUCED FOLLOWING CLARIFICATION AND COMMENTS RE BASES FOR ARTICLES 25 AND

26.2 OF SWISS IMPLEMENTING LEGISLATION:

ARTICLE 25 - A DEFENDANT IN AN AMERICAN PROCEEDING

CAN, RPT CAN, BE INTERROGATED I.E. CAN BE ASKED QUESTIONS

TO WHICH HE MAY VOLUNTARILY REPLY. THE KEY WORDS OF THE

RESTRICTIVE LANGUAGE OF IMPLEMENTING ARTICLE 25 ARE

QUOTE CANNOT GIVE TESTIMONY AS A WITNESS UNQUOTE. LANGUAGE

REFLECTS CONCERN WITH FORMAL SWISS DEFINITION OF WITNESS

AS SET FORTH IN CHAPTER 10 OF SWISS CODE OF CRIMINAL

PROCEDURE RE WITNESSES COMPELLED TO GIVE TESTIMONY, SWEAR

TO OR AFFIRM DECLARATION ETC. A DEFENDANT IN THE SWISS

FRAME OF REFERENCE MAY VOLUNTARILY ANSWER QUESTIONS BUT

CAN NEVER BE CONSIDERED A WITNESS I.E. ONE WHO IS

SUBJECT TO OBLIGATIONS AND SANCTIONS OF CHAPTER 10

REFERRED TO ABOVE.

2. ARTICLE 26.2 - ARTICLE 26.2 MAY PRESENT PROBLEMS.

MOST SWISS CANTONS HAVE LAWS REQUIRING WITNESSES TO SWEAR

TO OR AFFIRM THEIR TESTIMONY (MARKEES STATES THAT AT MOST

FOUR OR FIVE CANTONS DO NOT ADDRESS THIS SUBJECT IN THEIR

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CANTONAL LEGISLATION). THEREFORE, FOR THE GREAT MAJORITY

OF THE CANTONS, WITNESSES CAN BE COMPELLED TO SWEAR TO OR AFFIRM THEIR TESTIMONY AND THE SWISS AUTHORITIES CAN IMPOSE SANCTIONS FOR FAILURE TO COMPLY. IN THOSE FEW CANTONS WHERE NO LEGISLATION EXISTS, WITNESSES CAN BE COMPELLED UNDER TERMS OF THE TREATY TO SWEAR OR AFFIRM ON BASIS OF LAW OF THE REQUESTING STATE BUT SWISS CAN IMPOSE NO SANCTIONS FOR WITNESSES' REFUSAL TO COMPLY.

3. DR. MARKEES WILL RESEARCH SUBJECT AND INFORM EMBOFF PRECISELY WHICH CANTONS DO NOT HAVE LAWS CONCERNING THE SWEARING TO OR AFFIRMATION OF TESTIMONY.

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